

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RONNIE LOVELADY
Claimant

VS.

CITY OF WICHITA
Respondent
Self-Insured

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Docket No. 213,238

ORDER

The respondent requested review of an Order dated August 22, 1996, entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

The Administrative Law Judge found timely notice and ordered the respondent to provide claimant benefits. Respondent requested review of that Order and raised the following issues in its brief:

- (1) Did claimant provide timely notice?
- (2) Was claimant entitled to temporary total disability benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

The Order entered by the Administrative Law Judge should be affirmed.

Claimant alleges he sustained a work-related injury on December 6, 1995, while installing fence posts. The next day claimant advised one of his supervisors, Susan Turner, that he thought he had injured himself while working the day before. At that time claimant also told Ms. Turner that he was not certain of the extent of his injuries and that he felt he would need to see a doctor if the symptoms did not resolve. Claimant also testified that he told his immediate supervisor, Calvin Fugit, on or about December 13, 1995, that he had a herniated

disk in his back as a result of his activities at work. Respondent presented the testimony of Mr. Fugit who testified that claimant telephoned him the day after the alleged accident. According to Mr. Fugit, during that conversation claimant advised that he thought he may have hurt his back "pounding" fence posts at work but he was not certain.

The Administrative Law Judge found claimant gave respondent timely notice of the accident and the Appeals Board agrees. Although claimant felt he could not state with absolute certainty that he had sustained injury pounding fence posts, claimant did advise respondent that he experienced back symptoms and that he believed those symptoms were caused by his work activities. Claimant even went so far as to identify the specific work activity that he believed caused the injury, the date of the activity, and the location of the work site. Claimant provided respondent this information within ten days of the alleged date of accident. The Appeals Board finds that the information claimant furnished respondent satisfies the Workers Compensation Act's notice requirements.

The issue respondent raises regarding whether claimant is presently entitled to temporary total disability benefits is not an issue that the Appeals Board has jurisdiction to review at this juncture of the proceeding. The Administrative Law Judge has the authority to order the payment of temporary total disability benefits at preliminary hearing. Therefore, the Appeals Board does not have jurisdiction to review that issue under K.S.A. 44-551(b)(2)(A), as amended. Further, whether claimant's condition temporarily and totally disables him from substantial and gainful employment is not one of the appealable preliminary hearing issues. See K.S.A. 44-534a, as amended.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated August 22, 1996, entered by Administrative Law Judge Nelsonna Potts Barnes should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
David J. Morgan, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director